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September 12, 1994

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, C.C. Docket 94-54, RM-8012

Dear Mr. Caton:

Herewith transmitted on behalf of Telephone and Data Systems, Inc. ("TDS") and its subsidiary United States Cellular Corporation ("USCC") are an original and nine copies of their Comments in the Notice of Proposed Rulemaking and Notice of Inquiry in the above-referenced proceedings.

In the event of any questions concerning this matter, please communicate with this office.

Very truly yours,

Peter M. Connolly

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services	)	CC Docket 94-~~59~~ 54 RM-8012

COMMENTS OF TELEPHONE AND DATA SYSTEMS, INC. AND UNITED STATES CELLULAR CORPORATION

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September 12, 1994

Before the
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Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services	)	CC Docket 94-59 RM-8012

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Summary of Comments Filed By
Telephone and Data Systems, Inc.
and United States Cellular Corporation

Summary

Telephone and Data Systems, Inc. ("TDS") and its subsidiary United States Cellular Corporation ("USCC") oppose the imposition of "equal access" requirements on cellular carriers not now subject to them. The FCC should not act on its own motion to create these new regulatory burdens when there has been no demonstration that the public interest would be served by so doing.

The costs to USCC and other cellular carriers of implementing equal access will be substantial, in terms of the "hardware and software" necessary to implement equal access, the administrative expenses of balloting and presubscription, and the ongoing legal and administrative costs of operating in an equal access environment. Those costs constitute a formidable reason not to require equal access -- unless a countervailing public interest benefit from its imposition can be shown, which has not been done in this case.

In the past, the courts and the FCC have only imposed equal access requirements on entities which demonstrated market power over bottleneck facilities. There has been no such demonstration in this proceeding.

Also, competition in the wireless industry, particularly from broadband PCS, is about to increase exponentially. At a time when the wireless industry is on the verge of such epochal changes, the FCC should not increase regulatory constraints by mandating equal access, as competition will assure that customers have access to varied long distance services.

Moreover, mandating equal access would injure the ability of cellular carriers to provide wide local calling areas, by eliminating their ability to contract for discounted long distance rates from IXCs. The Commission has sought to avoid this problem by different approaches to defining the "local service area" within which equal access obligations will not apply, but none of its approaches will work.

The NPRM is supported essentially by unproven assumptions about the beneficial effects of equal access on network usage and the development of new services. However, the NPRM overlooks the fact that many cellular markets are already subject to equal access requirements in whole or in part and the FCC has cited no data in this proceeding to indicate that any of the predicted benefits exist in those markets.

If, however, the FCC does adopt equal access requirements for cellular carriers, it should not require any form of equal access which is beyond the technical capacity of the LEC with which a cellular system must interconnect. The Commission should also require IXCs to pay the necessary conversion costs.

The Commission should not require cellular carriers to share their subscriber lists with IXCs who may be competitors and the Commission should examine the whole issue of CMRS/IXC cross ownership because of the potential for conflict of interest and self dealing between IXC and commonly owned CRMS carriers.

The FCC should certainly not apply equal access obligations to CMRS providers other than cellular carriers, particularly paging licensees.

In conclusion, TDS submits that the NPRM's regulatory emphasis is fundamentally mistaken and unsuited to the market place realities of today and tomorrow. Equal access requirements should not be implemented.

Before the
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Washington, D.C. 20554

In the Matter of	)	
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services	)	CC Docket 94-59 RM-8012

COMMENTS

Telephone and Data Systems, Inc. ("TDS") and its subsidiary, United States Cellular Corporation ("USCC") hereby file their comments on the Notice of Proposed Rulemaking and Notice of Inquiry ("NPRM") released July 1, 1994 by the FCC in the above-captioned proceeding. TDS is profoundly opposed to the adoption of "equal access" requirements for cellular and other CMRS licensees not presently subject to such requirements. In its comments TDS will show that mandatory "equal access" would be a very expensive "solution" to a non-problem and accordingly would be contrary to the public interest. The proposal should be rejected.

Background

As is noted in our prior comments on the original 1992 MCI petition giving rise to this proceeding, USCC, through an operating subsidiary, placed its first cell in service in 1985, in the Knoxville, Tennessee MSA. USCC has since grown steadily,

playing its part in the development of cellular into a twenty million customer, sixteen billion dollar industry.[1]

As of June 30, 1994, USCC, through subsidiaries, owned and/or operated systems in 34 MSA and 108 RSA markets. It has 700 cells now in service and has constructed 52 switches. USCC owned and operated systems serve in excess of 362,000 customers and provide service to approximately 25,000 "roamers" on an average day. USCC's current fixed assets (that is, cells and switches) represent approximately $380,000,000 in value. In the last six months of 1994 and in 1995, USCC projects that it will spend approximately $260 million on new construction and system upgrades.

In devoting these resources to the construction of their cellular systems, TDS and USCC have, we submit, demonstrated their commitment to the achievement of a "seamless", nationwide cellular network.

It is also worth noting that the construction of this national network has been achieved partly as a consequence of an enlightened FCC regulatory regime, which has stressed, from the beginning, entrepreneurial freedom to innovate and expand, rather than the micromanagement of commercial interactions.

The NPRM proposes a sharp break with this tradition, which is the essential reason why TDS opposes it.

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[1] See Communications Daily, p. 2, September 7, 1994.

I. The NPRM Fails To Identify Any Adequate Reason For Mandated Equal Access

At the outset, it should be noted that the proposals put forward by the FCC in the NPRM have been made on its own motion and not as a consequence of statutory compulsion. When the Commission acted, for example, to impose far-reaching reregulation on the cable television industry and to create a structure for collecting regulatory fees, it did so pursuant to congressional direction through amendments of the Communications Act. In such cases, the fundamental public interest decision to proceed with a given course of action has been made by Congress and the FCC acts in its capacity as an implementing agency. But, where, as here, the FCC does not have to impose new regulatory burdens on a given industry, especially at the self-interested behest of another industry, it is the Commission's duty, we submit, to judge proposed new regulations skeptically and subject them to a searching analysis before they are imposed. If such an analysis is made here, the Commission's "tentative conclusion" that it "should impose equal access obligations on cellular providers"[2] surely cannot be sustained.

A. The Costs To USCC and Other Carriers Of Implementing Equal Access Will Be Substantial

As noted above, when the FCC considers proposed regulations, it should first look to the costs to its licensees of the proposed regulations.

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[2] NPRM, Paragraph 35

During its ten years of providing cellular service to an ever expanding customer base, USCC has never received a single complaint, or, to its knowledge, even an inquiry concerning rates for long distance service, which customers evidently perceive to be reasonable. For the most part, USCC's cellular systems receive long distance service from AT&T and USCC's customers are charged AT&T's standard long distance rates.

The "hardware and software" costs to USCC of providing equal access would be very considerable. At the present time, USCC has estimated its costs for implementing equal access in the following chart, which assumes that only three IXCs would interconnect with each of 50 of USCC's MTSOs (switches).

Cost of providing Equal Access:

		Per Switch	USCC MTSOs	Total USCC
Hardware	DTC (Digital Trunk Controller	$22,500	50	$1,125,000
per T1	Network Module	$2,500	50	$125,000
Software	Equal Access	$35,000	50	$1,750,000
Facilities:	Average T1 Cost x 3 Average IXC's	$15,600	50	$780,000
per Year				
	1st year cost	$75,600		$3,780,000
	Recurring Costs	$15,600		$780,000

Assumptions: *Hardware Costs only reflect portion of Hardware dedicated to required T1 support.

*Average of 3 IXCs per market.

As shown above, the total initial cost of mandatory interconnection, including the first year cost, per MTSO would be approximately $75,600 and the total first year cost of interconnecting 50 of USCC's MTSOs would be approximately $3,780,000. USCC estimates its subsequent yearly per switch recurring costs at $15,600 and thus estimates its total recurring yearly costs at $780,000. Further, with respect to certain of its switches, particularly those which it inherited from prior operators, USCC might have to replace the switch and the cell site equipment entirely, because of the proprietary protocol that exists between the switch and cell site equipment. USCC would also note that these costs do not include the managerial time which would have to be spent negotiating interconnection agreements with interexchange carriers, the legal fees which would be incurred, or the time USCC's technical personnel would have to spend implementing interconnection. Those costs would also be significant.

Also, cellular licensees such as USCC, which were not previously subject to equal access requirements, would have to bear the substantial administrative costs involved in implementing and constantly updating a system of balloting and presubscription for customers. This problem will be more severe for cellular carriers than it was for LECs, owing to the higher "churn" rates for cellular systems, which are a result of competition among wireless carriers.

TDS and USCC's resources are obviously finite and the money which they would have to spend on interconnection with more than one IXC could not be spent on cell site construction or other purposes.[3] Other cellular carriers would face comparable costs and, considered in the aggregate, those costs ought to be considered a formidable reason not to require equal access -- unless a countervailing public benefit can be demonstrated.

B. The FCC Has Failed To Demonstrate Any Public Interest Benefit From Implementing Equal Access

In the past, the courts and the FCC have imposed equal access requirements only when the entities upon which they were imposed had demonstrated market power over "bottleneck" facilities. Thus, the benefit to the public from the imposition of such requirements, which presumably outweighed the costs to the carriers, was the diminution of such monopolistic power and the promotion of competition in the relevant market. This is certainly the common thread among the imposition of equal access on the Bell Operating Companies, formerly owned by AT&T,[4] the related imposition of such requirements on BOC-affiliated cellular carriers,[5] and the imposition of such requirements on

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[3] It should also always be remembered that costs imposed on regulated entities are obviously ultimately paid for, in one way or another, by the customers of such entities.

[4] See United states v. AT&T, 552 F.Supp. 131 (D.D.C. 1982) aff'd sub. nom. Maryland v. U.S. 460 U.S. 1001 (1982).

[5] See, U.S. v. Western Electric Co., 673 F. Supp. 525, 551 (D.D.C. 1987)

local exchange companies affiliated with GTE[6] and on local exchange companies generally.[7] The FCC also imposed equal access provisions on operator service providers after determining that they had market power, which they had abused, in the provision of long distance service to pay telephone customers.[8]

AT&T has also pledged, if it is allowed to assume control of McCaw Cellular Communications, that McCaw's cellular systems will provide equal access in the future.

In each such case, the imposition of equal access requirements was a consequence of past or present market power.

There is no showing in the NPRM that cellular carriers not now subject to equal access requirements have the kind of market power previously deemed to be necessary in every case where such requirements were imposed, let alone that any other CMRS licensees have or will have such power. Where there is no market power, there is little or no potential for anti-competitive abuse.

In order to demonstrate such power or such abuse in this context, the Commission might have examined markets where one or both cellular carriers are now subject to equal access obligations and compared them to markets in which neither carrier

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[6] See, U.S. v. GTE Corp., 1985-1 Trade Cas. 166, 355 (D.D.C. 1984)

[7] See, MTS/WATS Market Structure (Phase III), 99 FCC 2d 292, 298 (1983).

[8] See, Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 4786 (1991).

is subject to such obligations. If long distance rates are substantially higher in the latter type of market than in the former, there might be a case for FCC action or at least for further inquiry. If, however, long distance rates showed no marked variance between the two types of markets then surely the case for an equal access requirement would be severely undermined.

As the Cellular Telephone Industry Association noted in 1992 in the earlier "MCI" proceeding, the BOCs then had an ownership interest in at least one of the two cellular licensees in two thirds of the "top 100" cellular markets and so there certainly would be data available concerning the actual effects, if any, of equal access. However, the NPRM, despite its considerable length, neither cites nor refers to any such data, through it does rely on the allegedly "substantial" record developed in the MCI proceeding. Indeed the NPRM shows no interest at all in the percentage of cellular carriers already subject to equal access, as that percentage might bear on the potential market power of those cellular carriers <u>not</u> now subject to such requirements, even though that information would obviously be highly relevant to any equal access/market power determination with respect to the latter group of carriers.

However, without such information, the FCC is "flying blind" and cannot reasonably proceed with equal access requirements, since such requirements must be based on prior factual findings of actual market power producing anti-competitive results.

B. Emerging Wireless Competition For Cellular Will Soon Make Obsolete Any Determination Concerning Competition

It is a fact well understood by all connected with the wireless industry that competition within that industry is about to increase exponentially. Within the next two years, for example, it is probable that Enhanced Specialized Mobile Radio ("ESMR") Systems will cover a majority of the United States and that new broadband PCS systems will be licensed in each cellular market. These are projections that there will be five to six competitive providers of wireless voice grade service in metropolitan areas. There will also be an expansion of traditional SMR services, the emergence of narrowband PCS, and improvements in paging service. The advent of these new services will transform the wireless marketplace, providing consumers with competitive approaches to all aspects of wireless service, including long distance service.

In a marketplace like that, where perhaps six licensees may be bidding for wireless customers, the fact that certain cellular carriers may offer their customers only one IXC should not be of importance to the FCC, as other carriers will certainly offer a wide choice of long distance arrangements, especially if such choices come to matter to consumers.

In any case, when the wireless industry is on the verge of such epochal changes in its market structure, it is certainly the sensible course to wait a few years at least for the competitive impact of the new services to be felt fully before embarking on a

costly regulatory program which might have been relevant, if at all, to the cellular duopoly structure of the late eighties and early nineties and not to the marketplace realities of tomorrow.

The NPRM appears not to grasp that the impending emergence of wide open competition among wireless carriers should be the occasion for relaxing regulatory constraints on existing licensees, not the occasion for extending them to other licensees and new entrants. If ever there was a time for governmental forbearance, this is it.

C. The Definition of "Local Service Area" Poses Insoluble Problems For Imposing Equal Access Obligations

The NPRM, at Paragraphs 56-70, reviews possible definitions of the "local service area," defined as the point at which calls must be handed off for the purposes of meeting equal access obligations. The Commission points out that local exchange carriers, cellular licensees, ESMR licensees and PCS licensees have radically different FCC defined service areas.

Thus, as the Commission implicitly acknowledges, almost any service area boundary definition for equal access purposes will create very difficult problems for both the carriers and the FCC.

The NPRM's "solution" to this problem is to call for a "flexible" policy (Paragraph 66) and then to propose, simultaneously, defining service boundaries by LATAs, by the relevant service area of the particular radio service, and by state lines (Paragraphs 67-70).

Though it is admittedly difficult to shoot at such an evasive target, it must be said any of those choices is unacceptable.

At Paragraph 66, the NPRM states that the public interest "would be disserved by a local service territory definition that impedes service offerings of mobile carriers, especially for wide area service." However, defining equal access local service areas in terms of LATAs, cellular service areas, or state lines would have precisely that effect.

The crux of the matter is this. By aggregating their own service areas or their own service areas with those of other carriers, and by offering local calling privileges within such "wide areas," many cellular licensees have created local calling areas which correspond neither to LATAs nor to state boundaries.

USCC, for example, offers local calling within an area including markets it owns and/or manages in the Lawton, Oklahoma, and Wichita Falls, Texas MSAs, the Texas 4 and 5 RSAs, and the Oklahoma 7 and 8 RSAs. USCC's competitor, McCaw, offers similar local calling rights in an area encompassing, inter alia, the Tulsa, Oklahoma City and Lawton, Oklahoma MSAs.

From the standpoint of an IXC, "equal access" would lose a large part of its meaning if the FCC were to "grandfather" these wide area systems, which sometimes include entire states or large interstate areas, as being excluded from equal access obligations.

And yet, from the standpoint of cellular customers, such wide area systems are clearly desirable. Hence the FCC's dilemma about the service area boundary definition, namely how to secure the alleged benefits of equal access while losing none of the demonstrated benefits of wide cellular calling areas. The way out of the dilemma, however, is not endlessly to tinker with such definitions. Rather, it is to abandon the whole idea of compulsory equal access.

There is also another aspect of the "local service territory" issue which the NPRM ignores, namely the importance of existing cellular/IXC relationships to the maintenance of wide local calling areas for cellular systems.

At the present time, cellular carriers profit by selling their customers long distance service at standard long distance rates and then paying the relevant IXC a fair price but less than its full retail rate per call. IXCs obviously profit from but do not like this arrangement and would like to deal with cellular end users directly, thus removing the cellular carrier as an aggregator, thereby increasing their own revenues. However, the FCC should not forget that one of the revenue sources which make large cellular local calling areas possible is precisely the margin on toll revenue which cellular carriers receive from paying discount rates to IXCs. If the FCC redirects those revenues from cellular carriers to IXCs by way of mandating equal access it will undermine the economics of providing large local calling areas, and thus injure cellular customers, without any

evidence that long distance rates charged to customers will be meaningfully lower as a result.

As is shown above, the FCC should not impose equal access obligations on cellular carriers not now subject to them or on other CMRS providers because (a) such carriers do not have market power, (b) new entrants will soon increase the competitiveness of the wireless industry, and (c) the ability of cellular carriers to contract with IXCs is beneficial to cellular customers.

II. Many of the Specific Arguments in the NPRM In Support of Equal Access Are Inadequately Supported Or Simply Erroneous

The NPRM offers a variety of specific arguments in support of its position which are either unsupported or invalid, which merit some discussion here.

At Paragraph 19, the NPRM cites MCI's claim that equal access will generate additional cellular call volume. TDS would submit that there is no evidence for this claim. What it amounts to is an assertion that there will be calls made by cellular customers which would not otherwise be made if the caller could choose among IXCs. But why would this be so? It is, we submit, very unlikely, in the case of USCC, that a cellular customer would be deterred from making a long distance call by the thought it would be carried by AT&T, which is still the nation's leading IXC.

It is precisely this kind of flimsy assumption which underlies the entire NPRM.

Similarly unsupported assumptions are reflected in Paragraphs 32, 38 and 44 of the NPRM, in which the Commission endorses equal access because it will presumably "increase access of end users and other telecommunications providers to networks," "permit IXCs to develop service offerings for discounted long distance service," and promote "new and innovative services."

Reading these paragraphs, one can forget that equal access is already available in a majority of at least the larger cellular markets. Presumably, if there were any data to support the claims that equal access actually enlarges network usage or produces discounted service offerings or generates new products the proponents would cite it. But there appears to be no such data. Instead, as in Paragraph 38, we read that reduced rates "should lead to increased demand" (emphasis added). Despite the reality of equal access for millions of customers, strangely, the arguments adduced for its extension to other carriers are all speculative and theoretical in nature.

TDS's position is simple. It is that the FCC should not consider imposing equal access obligations on cellular and other CMRS providers not now subject to them without evidence from those markets in which carriers are subject to equal access that it in fact produces increased usage and lower prices.

TDS would also point out in this connection that while equal access might produce greater efficiencies for IXCs, it would obviously reduce the trunking efficiency of cellular systems, thus increasing their costs. The NPRM assumes that the

construction of redundant interexchange networks is always a good thing. TDS submits that it is not, especially in relatively low demand rural areas.

In Paragraph 39, the FCC defends the imposition of equal access on "regulatory parity" grounds. TDS believes that this principle should not be used as a means of imposing unnecessary regulation on CMRS licensees just because other CMRS licensees may be subject to it for historical or other reasons. Parity should not be construed to be equivalent to uniformity. As noted above, the cellular industry has flourished in an atmosphere of entrepreneurial freedom with the minimum regulation necessary to protect the public interest. The FCC should approach the concept of regulatory parity in a similar spirit. It should seek to lift the burden of unnecessary regulation from all CMRS providers rather than to impose such regulations uniformly in a spirit of "one size fits all."

Ultimately, at Paragraph 112 of the NPRM, the FCC concludes that the "benefits" of requiring equal access outweigh the "costs." As discussed previously, TDS disagrees with this conclusion, as we consider the benefits of equal access to be illusory while the costs to be all too real for carriers and customers. Also in that paragraph, the FCC tentatively concludes that equal access will promote improved access to interexchange networks for customers and thus that it should be required.

However, here, as elsewhere in the NPRM, the Commission gives evidence of a strange lack of faith in competition. If the

features offered by "interexchange networks" do become an important aspect of wireless competition, then cellular and other CMRS carriers will make them available or suffer competitively. It is really that simple. Before imposing a heavy-handed bureaucratic solution, why not wait and see if competition does its work?

III. If, However the FCC Does Require Equal Access Certain Additional Provisions Should Also Be Adopted

As noted above, the FCC should not adopt the equal access proposals put forward in the NPRM. If, however, it does adopt some kind of equal access requirement, certain safeguards should be built into the FCC's rules to protect cellular and other CMRS providers from being placed in technologically impossible situations in implementing equal access.

As is noted in Paragraph 40 of the NPRM, in order to implement "1+ equal access," Type 2 interconnection with LECs is necessary. However, in many cases, especially in rural areas, that type of interconnection is simply unavailable owing to the absence of "tandem" switches. The Commission should make it clear that if the LECs in a cellular service area or other CMRS provider's service area do not have all necessary facilities to implement equal access, then equal access should not be required.

In the alternative, the FCC could make it clear that 10XXX codes would be sufficient to provide "equal access" if a given cellular system had Type 1 interconnection with its local LEC.

If the FCC chooses to impose equal access, the FCC has to state clearly that equal access interconnection should be

provided only after a bona fide request by an IXC to the carrier and that the IXC must be responsible for paying the conversion costs. At Paragraph 95 of the NPRM, the FCC states that "any charge would need to be assessed against all IXCs and end users." TDS submits that imposing such charges on end users (i.e. customers) would defeat the ostensibly pro-consumer purpose of equal access. It also, of course, is an additional reason why equal access should not be imposed in the first place, since it would require customers to pay the costs of implementing services they haven't requested, for the most part will not use, and do not need. If there is to be equal access, it is only fair that it be paid for by those entities which will profit from it, namely the IXCs.

If equal access is implemented, there would clearly have to be some form of customer presubscription, balloting, and allocation, though the LEC model seems very expensive and bureaucratic, especially for smaller, rural cellular systems, which have relatively few customers and high "churn" rates.

However, TDS considers the FCC's proposal (Paragraph 89) that cellular carriers be required, under certain circumstances, to share their customer lists with unaffiliated interexchange carriers, who may be wireless competitors in same or other markets, to be unrealistic and dangerous.

Customer lists are the most prized possession of any cellular carrier. Giving them up to competitors will be bitterly resisted by cellular carriers, who will not be mollified by a